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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2010-0031]

Pine Shoot Beetle; Addition of Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding areas in the States of Illinois, Maryland, Missouri, New York, and Virginia and the States of Indiana and New Jersey in their entirety to the list of quarantined areas. We are taking this action following the detection of pine shoot beetle in those areas. In addition, we are updating the list of regulated articles. These actions are necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to

<http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0031>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2010-0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0031> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mrs. Andrea Simao, National Policy Manager, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 851-2067.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart Pine Shoot Beetle, (7 CFR 301.50 through 301.50-10, referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a destructive forest pest that attacks both managed and natural stands of pine and especially affects weak and dying trees. The beetle has been found in a variety of pine species (Pinus spp.) in the United States. Scotch pine (P. sylvestris) is the pest’s preferred host. PSB has been reported to also occasionally attack other conifers such as fir (Abies spp.) and spruce (Picea spp.) at low levels. During “shoot feeding,” young beetles tunnel into the center of pine shoots

(usually those from the current year's growth), causing stunted and distorted growth in host trees. Large infestations of PSB typically kill most of the lateral shoots near the tops of trees. In addition, PSB is a vector of several diseases of pine trees.

Quarantined Areas

Recent surveys conducted by State and Federal inspectors have revealed that additional areas in the States of Illinois, Indiana, Maryland, New Jersey, New York, and Virginia are infested with PSB. In addition, PSB has been found for the first time in areas in the State of Missouri. Copies of the surveys may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

The regulations in § 301.50-3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe that PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found. The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- The State has adopted and is enforcing a quarantine area and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of those articles; and
- The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, we are adding the following counties to the area quarantined for PSB: Cumberland, Effingham, Fayette, Knox, Mercer, Rock Island, and Warren

Counties, IL; Baltimore, Carroll, Harford, and Howard Counties, MD; Adair, Clark, Lewis, Macon, and Marion Counties, MO; Dutchess, Putnam, and Westchester Counties, NY; and Loudon County, VA. The States of Indiana and New Jersey have elected to not continue their intrastate quarantines; therefore, this rule designates the States of Indiana and New Jersey in their entirety as quarantined areas.

Regulated Articles

Section 301.50-2 of the regulations designates certain items as regulated articles.

Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.50-4 through 301.50-10 of the regulations. Regulated articles listed in § 301.50-2(a) have included pine products (Pinus spp.) such as bark products, Christmas trees, logs with bark attached, lumber with bark attached, nursery stock, raw pine materials for pine wreaths and garlands, and stumps. There have been questions whether “logs with bark attached” includes firewood. To clarify that firewood is a regulated article, we are updating the list of regulated articles to include firewood.

Miscellaneous

In § 301.50-1, the definition of regulated article states that regulated articles are listed in § 301.50-2(a) or (b) of the subpart or are otherwise designated as a regulated article in accordance with § 301.50-2(c); however, there is no longer a paragraph (c) in § 301.50-2. Therefore, we are amending the definition of regulated article to reflect the current contents of § 301.50-2.

In § 301.50-7, paragraph (a) refers to the requirements for certificates and limited permits provided in paragraph (c) of § 301.50-5. Those requirements are actually in paragraph (d) of that section. We are correcting that error.

Emergency Action

The rulemaking is necessary on an emergency basis to prevent the spread of PSB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the Federal Register.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the Federal Register. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. The full analysis may be viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

Pine shoot beetle damages urban ornamental trees and can cause economic losses to the timber industry. Entities also affected by this rule include nurseries, Christmas tree farms, logging operations, moving companies and others that sell, process, or move regulated articles interstate from the regulated areas. APHIS has identified approximately 4,080 entities in the areas discussed in this document that may be affected, of which at least 2,858 are nurseries and

greenhouses, and at the minimum 1,222 are cut Christmas tree farms. There also may be sawmills and logging operations that may be affected, but we do not have information about them.

Regulated articles from quarantined areas may be moved interstate if accompanied by a certificate or limited permit. However, movement of cut Christmas pine trees and other regulated articles is generally local. Nurseries and greenhouses mostly specialize in production of deciduous landscape products rather than production of rooted pine Christmas trees and pine nursery stock.

Based on our review of available information, APHIS does not expect the interim rule to have a significant economic impact on small entities. In the absence of significant economic impacts, we have not identified alternatives that would minimize such impacts.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301--DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.50-1 is amended by revising the definition of regulated article to read as follows:

§ 301.50-1 Definitions.

* * * * *

Regulated article. Any article listed in § 301.50-2(a) of this subpart or otherwise designated as a regulated article in accordance with § 301.50-2(b) of this subpart.

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§ 301.50-2 [Amended]

3. In § 301.50-2, paragraph (a) is amended by adding the words “and firewood” after the word “logs”.

4. In § 301.50-3, paragraph (c) is amended as follows:

a. In the entries for Illinois, Maryland, New York, and Virginia, by adding new counties in alphabetical order.

- b. By revising the entries for Indiana and New Jersey.
- c. By adding, in alphabetical order, an entry for Missouri.

The revisions and additions read as follows:

§ 301.50-3 Quarantined areas.

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(c) * * *

Illinois

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Cumberland County. The entire county.

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Effingham County. The entire county.

Fayette County. The entire county.

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Knox County. The entire county.

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Mercer County. The entire county.

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Rock Island County. The entire county.

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Warren County. The entire county.

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Indiana

The entire State.

* * * *

Maryland

* * * *

Baltimore County. The entire county.

Carroll County. The entire county.

* * * *

Harford County. The entire county.

Howard County. The entire county.

* * * *

Missouri

Adair County. The entire county.

Clark County. The entire county.

Lewis County. The entire county.

Macon County. The entire county.

Marion County. The entire county.

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New Jersey

The entire State.

New York

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Dutchess County. The entire county.

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Putnam County. The entire county.

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Westchester County. The entire county.

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Virginia

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Loudon County. The entire county.

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§ 301.50-7 [Amended]

5. In § 301.50-7, paragraph (a) is amended by removing citation “§ 301.50-5(c)” and adding the citation “§ 301.50-5(d)” in its place.

Done in Washington, DC, this 14th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014-08722 Filed 04/16/2014 at 8:45 am; Publication Date: 04/17/2014]